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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON

8
9 BRANDON C. PRIES,

10 Plaintiff,

11 v.

12 OFFICER TOBY BRYER and OFFICER
13 JOSEPH DOTSON,

14 Defendants.
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NO: 2:14-cv-00298-SAB

**ORDER RE DEFENDANTS'
MOTION TO DISMISS AND
MOTION FOR JUDICIAL
NOTICE**

16 Before the Court is Defendants' Motion to Dismiss for Failure to State a
17 Claim and Motion for Judicial Notice. ECF No. 18. Defendants originally filed
18 their motion on May 5, 2015 but failed to properly serve it on the Plaintiff.
19 Defendants corrected this defect and their motion was served on June 16, 2015.
20 ECF No. 22. This motion was heard without oral argument.

21 ***Facts***

22 Plaintiff Brandon C. Pries alleges that on October 19, 2013, he was located
23 at Freeway Park when he saw a police patrol car. Upon spotting the police,
24 Plaintiff began to leave the park on his bicycle. Officers Bryer and Dotson
25 instructed the Plaintiff to stop—an order Plaintiff ignored. The Officers caught up
26 to Plaintiff three blocks away and placed him into handcuffs. The Officers
27 provided Plaintiff's information to dispatch and were informed he had an
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1 outstanding Department of Corrections warrant. A subsequent search of Plaintiff
2 revealed two bags of suspected methamphetamine. Plaintiff was booked for
3 possession of a controlled substance and for the outstanding warrant.

4 On June 6, 2014, a Spokane County Superior Court Judge suppressed the
5 evidence seized after Plaintiff was handcuffed finding the Officers lacked
6 reasonable suspicion to stop the Plaintiff. Several months later, the possession of a
7 controlled substance charge was dismissed by the prosecuting attorney. Plaintiff
8 pleaded guilty to Escape from Community Custody and was convicted of Failing
9 to Register as a Sex/Kidnapping Offender. He was sentenced to forty-five months
10 imprisonment.

11 Plaintiff brought suit against the Spokane Police Department, Officer Toby
12 Bryer, Officer Joesph Dotson and Chief of Police Frank Staub, for illegal arrest
13 and detention. This Court ordered Plaintiff to amend or dismiss his complaint.
14 ECF No. 8. Plaintiff's First Amended Complaint, ECF No. 10, removed the
15 Spokane Police Department and Chief Staub as defendants and characterized his
16 claims as violations of the Fourth Amendment for an illegal arrest and an illegal
17 search and seizure, presumably under 42 U.S.C. § 1983. Defendants filed an
18 Answer, ECF No. 17, and a Motion for Judicial Notice and to Dismiss for Failure
19 to State a Claim. ECF No. 18.

20 *Motion Standard*

21 A Federal Rule of Civil Procedure Rule 12(b)(6) motion to dismiss for
22 failure to state a claim must be filed prior to a responsive pleading. *Elvig v. Calvin*
23 *Presbyterian Church*, 375 F.3d 951, 954 (9th Cir. 2004). When, as here, a party
24 has filed an answer before filing a motion to dismiss, the Court construes the
25 motion as a Rule 12(c) judgment on the pleadings. *Aldabe v. Aldabe*, 616 F.2d
26 1089, 1093 (9th Cir. 1980). In reviewing a Rule 12(c) motion, the Court views the
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1 facts in the light most favorable to the non-movant—in this case, the Plaintiff.
2 *Hoelt v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1301 n.2 (9th Cir. 1992).

3 The Court will grant judgment on the pleadings when there is no issue of
4 material fact in dispute and the moving party is entitled to judgment as a matter of
5 law. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009). This standard is
6 “substantially identical” to the Rule 12(b)(6) standard. *Chavez v. United States*,
7 683 F. 3d 1102, 1108 (9th Cir. 2012). Accordingly, the Court must determine
8 whether the complaint “contain[s] sufficient factual matter, accepted as true, to
9 state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662
10 678 (2009).

11 *Analysis*

12 Judicial Notice

13 Defendants move the Court to take judicial notice of Plaintiff’s 1) Felony
14 Judgment and Sentence from October 15, 2014; 2) Warrant of Commitment dated
15 October 15, 2014; 3) the Findings of Fact and Conclusions of Law dated
16 November 18, 2014; 4) Warrant of Commitment dated November 18, 2014; and 5)
17 Felony Judgment and Sentence Prison dated November 18, 2014. Plaintiff
18 previously attached the Findings of Fact and Conclusions of Law dated June 20,
19 2014, to his First Amended Complaint. ECF No. 10.

20 Ordinarily, when matters outside the pleadings are presented, the Court must
21 treat the motion as a Rule 56 motion for summary judgment. Fed. R. Civ. P. 12(d).
22 The Ninth Circuit, however, has set out two situations where a court may properly
23 consider evidence outside of the pleadings for a Rule 12(b)(6) or Rule 12(c)
24 motion. First, a court may consider material submitted as part of the complaint .*See*
25 *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001). Second, a court
26 may take judicial notice of matters of public record. *Id.* Here, Plaintiff attached the
27 June 20, 2014 Findings of Fact and Conclusions of law to his First Amended
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1 Complaint, satisfying the first exception. Additionally, all of the materials that
2 Defendants submit, as well as the June 20, 2014 Findings of Fact and Conclusions
3 of Law, are matters of public record—falling under the second exception.
4 Accordingly, the Court finds it appropriate to take judicial notice of the materials
5 listed above.

6 Judgment on the Pleadings

7 Defendants' motion relies solely on the argument that *Heck v. Humphrey*
8 bars Plaintiff's claims for unlawful arrest and illegal search and seizure. 512 U.S.
9 477 (1994). In *Heck*, the Supreme Court held a Plaintiff could not recover under
10 § 1983 if a finding in his favor would necessarily imply the invalidity of his
11 criminal conviction or sentence. 512 U.S. at 486-87. If, however, the plaintiff's
12 action, if successful, would not demonstrate the invalidity of a criminal judgment
13 against the plaintiff, the claim should otherwise be allowed to proceed. *Id.* In this
14 case, Plaintiff's relevant convictions are for Escape from Community Custody, and
15 Failing to Register as a Sex/Kidnapping Offender.

16 The facts, as presented by Plaintiff, assert that he was placed in handcuffs
17 when the officers caught up to him a few blocks from the park. According to the
18 June 20, 2014 Findings of Fact and Conclusions of Law, there was no reasonable
19 suspicion to conduct the stop that resulted in Plaintiff's arrest. Although Plaintiff's
20 custody began during this allegedly illegal stop, it is unclear how a finding that the
21 arrest and search and seizure was illegal would undermine the legitimacy of
22 Plaintiff's convictions and current imprisonment. In fact, a Superior Court judge
23 already made such a finding *before* Plaintiff was convicted of the relevant charges.
24 Nothing in Plaintiff's complaint resembles a collateral challenge to his convictions
25 and Defendants have not made clear how a finding for Plaintiff would necessarily
26 undermine the legitimacy of his convictions and imprisonment. Accordingly,
27 Defendants' motion for judgment on the pleadings, ECF No. 18, must be denied.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendants' Motion to Dismiss for Failure to State a Claim, ECF No. 18,
3 is **DENIED**.

4 2. Defendants' Motion for Judicial Notice, also ECF No. 18, is
5 **GRANTED**.

6 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
7 order and forward a copy to the counsel and Plaintiff.

8 **DATED** this 25th day of August 2015.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

Stanley A. Bastian
United States District Judge